

Appl. No. 10/647,963
Resp. to Office Action mailed December 2, 2008
Response dated May 28, 2009

REMARKS

Claims 1-15 are currently pending in the Application. Claims 1, 5 and 9 are independent claims. Claims 2-4, 6-8 and 10-15 depend from independent claims 1, 5 and 9, respectively. The Applicant respectfully requests that the application be reconsidered in view of foregoing amendments and the following remarks.

Rejections Under 35 U.S.C. §102(e) - Pettey

Claims 1-15 were rejected under 35 U.S.C. §102(e) as being anticipated by Pettey et al. (U.S. Patent No. 7,188,209, hereinafter “Pettey”). Without acknowledging that Pettey qualifies as prior art under 35 U.S.C. §102(e), the Applicant respectfully traverses the rejections for at least the following reasons.

Pettey is not prior art to the present application. The Applicant first notes that the filing date of Pettey (i.e., April 19, 2004) is after the filing date of the present application (i.e., August 26, 2003). The Applicant further notes that although Pettey claims it is a continuation-in part of Application Serial No. 10/802,532, Application Serial No. 10/802,532 was filed on March 16, 2004, which is after the filing date of the present application (i.e., August 26, 2003). Additionally, Pettey claims priority to six provisional patent applications. However, four of the six provisional patent applications were filed after the filing date of the present application. Of the two provisional patent applications (i.e., Provisional Application Nos. 60/491,314, filed on July 30, 2003 and 60/464,382, filed on April 18, 2003) that have filing dates prior to the filing date of the present application, the Applicant notes that neither contain the figures and text relied on by the Office Action in Pettey. Thus, because the cited sections of Pettey are not supported by the two provisional patent applications, the cited sections of Pettey do not have a priority date of either of the provisional patent applications.

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Also, even if Pettey was entitled to a priority date of one of the two provisional patent applications (which it clearly is not), the Applicant notes that the present application is entitled to an earlier priority date. For example, the present application claims priority to four provisional patent applications (i.e., Provisional Patent Application Nos. 60/458,719, filed March 28, 2003; 60/448,656, filed February 18, 2003; 60/456,831, filed March 21, 2003; and 60/463,014, filed April 15, 2003). Further, the claims of the present application are supported by the cited provisional patent applications. As one example, claims 1-8 and 13-15 of the present application are at least supported by Figures 4-5 and Paragraphs [28]-[33] of Provisional Patent Application No. 60/458,719, filed March 28, 2003. Further, claims 9-12 of the present application are at least supported by Figures 2-3 and Paragraphs [23]-[27] of Provisional Patent Application No. 60/458,719, filed March 28, 2003. Because at least Provisional Patent Application No. 60/458,719, filed March 28, 2003, to which the present application claims priority, supports the Applicant's claims and is prior to the filing dates of the applications to which Pettey claims priority, the Office Action has failed to establish that Pettey is prior art to the present application.

The Applicant notes that Pettey identifies other related applications in Column 2, Lines 1-27 and 45-51 of the patent; however, Pettey does not claim the benefit of the other identified applications as evidenced by the Certificate of Correction filed and accepted in Pettey. Regardless, the Applicant notes that the additional identified applications are after the priority date of the present application and/or do not provide support for the cited sections of Pettey.

Because the Office Action has failed to establish that the cited sections of Pettey are entitled to an earlier priority date than the claims of the present application, the Applicant notes that the Office Action has failed to establish a *prima facie* case of anticipation.

Therefore, for at least the above stated reasons, Applicant respectfully submits that the cited sections of the Pettey reference are not prior art to Applicant's invention as set forth in claims 1-15. The Applicant believes that claims 1-15 are allowable over Pettey. The Applicant further submits that even if Pettey was prior art to the present application (which it clearly is not), that Pettey fails to teach the limitations set forth in Applicant's claims 1-15. The Applicant

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respectfully requests, therefore, that the rejections of claims 1-15 under 35 U.S.C. §102(e), be withdrawn.

Final Matters

The Office Action makes various statements regarding claims 1-15, 35 U.S.C. § 102(e), the Pettey reference, etc. that are now moot in view of the above amendments and/or arguments. Thus, the Applicant will not address all of such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicant reserves the right to argue additional reasons supporting the allowability of claims 1-15 should the need arise in the future.

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CONCLUSION

Applicant respectfully submits that all of claims 1-15 are in condition for allowance, and requests that the application be passed to issue.

Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Please charge any required fees not paid herewith or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Dated: May 28, 2009

Respectfully submitted,

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